IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:	**:**	**CIVIL ACTION NO. 11-6053**
ICE TREATS ONE, INC., et al.,	**:**	
Debtors.	**:**	**BANKRUPTCY NO. 11-15317**
	:	

ORDER

This is an appeal from an August 25, 2011 Order issued by the United States Bankruptcy Court for the Eastern District of Pennsylvania ("Bankruptcy Court"). Appellants Rocco's Italian Ice-Feltonville, LLC, Rocco's Italian Ice-Lawncrest, LLC, and Rocco's Italian Ice-Nicetown, LLC ("Appellants") appeal the Bankruptcy Court's August 25, 2011 Order, which declared that Appellants violated the automatic stay by continuing to exercise control, authority, and dominion over equipment and inventory of Debtor-Appellees ("Debtors").[1] Before this Court is Debtors' Motion to Strike the Appeal.[2]

Appellants have not filed a motion for leave to appeal an interlocutory judgment;[3] therefore, the present appeal is considered an appeal of right pursuant to 28 U.S.C. § 158(a)(1), which requires a final order to have been entered by the bankruptcy court. Debtors argue that the appeal is premature because the Bankruptcy Court has not yet determined the amount of damages,[4] and assert that this Court must therefore dismiss the appeal and remand the matter to

[1] See Debtors' Motion to Strike Appeal ("Mot. to Strike"), Doc. No. 6, Ex. "A."

[2] Doc. No. 6.

[3] If an appellant wishes to appeal an interlocutory judgment, order, or decree, the notice of appeal filed with the bankruptcy court must be accompanied by a motion for leave to appeal. B.R. 8001(b).

[4] The Bankruptcy Court granted Debtors' motion for sanctions and damages pursuant to 11 U.S.C. § 362(k), ordered that the parties submit briefing on the issue of damages, and scheduled a hearing on damages for

the Bankruptcy Court.[5]

Section 158(a) provides that "[t]he district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under [28 U.S.C. § 157]."[6] Generally, "a judgment which finds liability but does not determine damages is not final."[7] However, as Appellants' argue, "finality" is interpreted pragmatically in bankruptcy cases, which often involve protracted proceedings with numerous parties asserting different claims.[8] In such cases, to delay the appeal of discrete claims until the bankruptcy court's final approval of the reorganization plan would risk nullifying the plan for each order reversed on appeal.[9] Therefore, courts balance this "traditional antipathy toward piecemeal appeals" against the "relaxed sense of 'practical finality.'"[10]

The Order in the present case is not final in the traditional sense because the Bankruptcy Court has postponed ruling on the issue of damages until after the hearing on damages.[11] Under

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September 21, 2011. Mot. to Strike, Ex. A. The hearing has since been rescheduled for October 25, 2011.

[5] In re Prof'l Ins. Mgmt., 285 F.3d 268, 279 (3d Cir. 2002) (stating that an order in civil litigation is ordinarily final when it disposes of all the issues as to all the parties involved).

[6] 28 U.S.C. § 158(a).

[7] In re Basher, 301 B.R. 175, 179 (Bankr. E.D. Pa. 2003) (citing In re White Beauty View, Inc., 841 F.2d 524, 526 (3d Cir. 1988) (providing examples of final and non-final orders in bankruptcy proceedings)).

[8] In re White Beauty View, Inc., 841 F.2d at 526.

[9] Id.

[10] In re Prof'l Ins. Mgmt., 285 F.3d 268, 279 (3d Cir. 2002); see also In re White Beauty View, Inc., 841 F.2d at 526 ("Despite that relaxed view of finality in the bankruptcy setting as a whole, the general antipathy toward piecemeal appeals still prevails in individual adversary actions.").

[11] In re Prof'l Ins. Mgmt., 285 F.3d at 279.

the Forgay-Conrad doctrine, or the "practical finality" rule,[12] an order can be considered final even if it does not declare an exact sum of damages, provided it "sufficiently disposes of the factual and legal issues and any unresolved issues are sufficiently 'ministerial' that there would be no likelihood of further appeal."[13] An order is "sufficiently ministerial" if the calculation of damages is "mechanical and uncontroverisial."[14] Here, however, determining the amount of damages owed by Appellants will be neither mechanical nor uncontroversial. The Bankruptcy Court will not make a simple calculation using an agreed upon formula and undisputed inputs. Rather, the Bankruptcy Court must conduct a factual inquiry into Appellants' use of Debtors' equipment and inventory and the type and extent of damage, if any, caused by this use.

At this point, the Bankruptcy Court's ultimate determination on damages is far from certain and should not be regarded as a "practical finality" which stands no chance of resulting in an appeal itself.[15] Furthermore, Appellants have not demonstrated that unfairness or undue prejudice would result from delaying this appeal until the issue of damages has been resolved. Accordingly, the Court finds that the August 25, 2011 Order is not final and therefore not appealable at this time. The Court will dismiss the appeal and remand the matter to the

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[12] This doctrine applies outside of the bankruptcy context to proceedings which invoke similar concerns of wasted time and resources.

[13] In re Basher, 301 B.R. at 179-180 (quoting Apex Fountain Sales, Inc. V. Kleinfeld, 27 F.3d 931, 935 (3d Cir. 1994)).

[14] Id.

[15] Compare Vitale v. Latrobe Area Hosp., 420 F.3d 278, 280-81 (3d Cir. 2005) (finding that although the judgment failed to specify the amount of damages, the judgment was nonetheless appealable because calculating damages would be "mechanical and uncontroversial"), with Apex Fountain Sales, Inc. v. Kleinfeld, 27 F.3d 931, 935 (3d Cir. 1994) (concluding that a contempt order was not a final, appealable order because the lower court had not yet determined the amount of damages, which required an assessment of the net profit which the appellee would have realized absent the appellant's contemptuous acts).

Bankruptcy Court.

AND NOW, this 25th day of October 2011, upon consideration of Debtors' Motion to Strike the Appeal (Doc. No. 6), and Appellants' response thereto (Doc. No. 11), and for the reasons stated above, it is hereby **ORDERED** that the Motion to Strike is **GRANTED**. The appeal is **DISMISSED** and the matter is **REMANDED** to the Bankruptcy Court for further proceedings.

It is so **ORDERED.**

BY THE COURT:

/s/ Hon. Cynthia M. Rufe

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HON. CYNTHIA M. RUFE